

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX REFERENCE NO. 11 OF 1993.

Cadbury Fry (India) Ltd.

... Applicant.

V/s.

The Commissioner of Income-tax. ... Respondent.

J.D.Mistry i/b. Crawford Bayley & Co.
for the applicant-assessee.

A.K.Kotangale for the respondent-revenue.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 3rd August 2005.

P.C. :

. By this reference under section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the liability for the payment of surtax is not an admissible deduction in the computation of total income under the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Tribunal

was right in holding that commission payments made to a Director are to be treated as remuneration for the purposes of computing the disallowance u/s.

40(c) of the Act?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest paid on borrowed monies by way of public deposits is allowable only in computing income from business and thereby holding that provisions of sec. 40A(8) are applicable to such interest payments?

2. Learned counsel for the parties agreed that in view of the decision of the Apex Court in the case of **Smith Kline & French (I) Ltd. v. C.I.T.**, (1996) 219 ITR 581, question No.1 has to be answered in the affirmative i.e. in favour of the revenue and against the assessee. It is accordingly answered.

3. They further agreed that question No.2 is also squarely covered by the decision of the Apex Court in the case of **C.I.T. v. Indian Engg. & Commercial Corpn.**, (1993) 201 ITR 723, wherein it

was observed that limit to allowance does not apply to commission paid at a percentage on sales effected by the assessee. In view of the above judgment, the Tribunal in the present case was not justified in treating the commission payments as remuneration for the purposes of computing disallowance. Question No.2, is, accordingly, answered in the negative i.e. in favour of the assessee and against the revenue.

4. Learned counsel for the parties further agreed that in view of the decisions of this Court in the case of **Hindustan Cocoa Products Ltd. v. C.I.T.**, (1999) 236 ITR 140 and **C.I.T. v. Albright Morarji and Pandit Ltd.**, (1999) 236 ITR 914, question No.3 has to be answered in the affirmative i.e. in favour of the revenue and against the assessee.

5. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.)

(V.C.DAGA, J.)